

<b>TO:</b> <div style="text-align: center;"> <b>Mail Stop 8</b>  <b>Director of the U.S. Patent and Trademark Office</b>  <b>P.O. Box 1450</b>  <b>Alexandria, VA 22313-1450</b> </div>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court OREGON on the following ☐ Patents or ☐ Trademarks:

DOCKET NO. 08-1328-HU	DATE FILED 11/12/2008	U.S. DISTRICT COURT District of Oregon
<b>PLAINTIFF</b>  <div style="text-align: center;">Raptor Archery, Inc.</div>		<b>DEFENDANT</b>  <div style="text-align: center;">2XJ Enterprises, Inc</div>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1    See attached complaint		
2    2,144,149		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

<b>DECISION/JUDGEMENT</b>
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<b>CLERK</b>  <div style="text-align: center;">Sheryl S. McConnell</div>	<b>(BY) DEPUTY CLERK</b>	<b>DATE</b>  <div style="text-align: center;">Elizabeth Potter 11/13/2008</div>
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

HW  
William H. Sumerfield, OSB #89126  
bill@phillipsreynier.com  
Phillips Reynier & Sumerfield, LLP  
718 State Street, P. O. Box 758  
Hood River, OR 97031  
(541) 386-4264  
FAX: (541) 386-2557

FILED 08 NOV 12 13:40 USC ORF

Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

RAPTOR ARCHERY, INC., an Oregon  
Corporation,

Plaintiff,

v.

2XJ ENTERPRISES, INC., a Maryland  
corporation,

Defendant.

CV 08-1328-HU

COMPLAINT FOR TRADEMARK  
INFRINGEMENT

JURY TRIAL DEMANDED

COMPLAINT

1.

Plaintiff Raptor Archery, Inc. ("Raptor") files this complaint seeking a judgment and injunctive relief against defendant 2XJ Enterprises, Inc. ("2XJ") for trademark infringement, unfair competition, dilution and false advertising in violation of the Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq., and under the common law of Oregon.

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1 - COMPLAINT FOR TRADEMARK INFRINGEMENT

# 23955

## **PARTIES**

2.

Raptor is an Oregon corporation with its principal place of business at 923 11<sup>th</sup> Street, Hood River, Oregon 97031.

3.

2XJ is a Maryland corporation with its principal place of business in North East Maryland.

4.

2XJ markets its products throughout the United States, including the District of Oregon.

## **JURISDICTION AND VENUE**

5.

Jurisdiction exists pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 1367, and 15 U.S.C. § 1121.

6.

The suit is based on a federal question, namely 15 U.S.C. §§ 1051 et seq.

7.

In addition, the plaintiff and defendant are residents of different states and the amount in controversy exceeds the sum or value of \$75,000.00.

8.

Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391.

9.

Some of the events giving rise to the causes of action described herein occurred in the

District of Oregon, and the acts complained of are occurring in the District of Oregon.

**BACKGROUND**

10.

Raptor Archery manufactures archery products, including bows, arrows, and broadheads.

11.

Since 1991, Raptor has continuously marketed its products under the brand name RAPTOR ARCHERY and used RAPTOR ARCHERY trademark through the United States.

12.

Raptor has acquired common law trademark rights in its RAPTOR ARCHERY trademark.

13.

Raptor registered its RAPTOR ARCHERY trademark with the United States Patent and Trademark Office on March 17, 1998, and was issued U.S. Trademark Registration No. 2,144,149 for archery equipment, namely, bows, arrows, quivers, shafts, feathers, broadheads, and points.

14.

Raptor renewed its trademark registration for RAPTOR ARCHERY on March 12, 2008.

15.

The registered RAPTOR ARCHERY mark remains in full force and effect and is valid.

16.

Pursuant to 15 U.S.C. § 1065, the registered RAPTOR ARCHERY mark has become incontestable.

**3 - COMPLAINT FOR TRADEMARK INFRINGEMENT**

17.

Long after Raptor began using and registered its RAPTOR ARCHERY mark, 2XJ began offering and selling broadhead products under the name "CRIMSON RAPTOR."

18.

2XJ uses marks that are similar to the RAPTOR ARCHERY mark to advertise its products to the public.

19.

2XJ's use of a mark that is identical to the RAPTOR ARCHERY mark constitutes a representation to the public that its products and services are related as to source, origin or sponsorship of the products and services that use the RAPTOR ARCHERY mark.

20.

2XJ's use of marks that are confusingly similar to the RAPTOR ARCHERY mark will reduce the capacity of the RAPTOR ARCHERY mark to serve as unique identifiers of Raptor's products and services.

**COUNT ONE: FEDERAL TRADEMARK INFRINGEMENT**

21.

The foregoing paragraphs are incorporated herein by reference.

22.

2XJ has knowingly used in commerce a reproduction, copy or colorable imitation of Raptor's registered RAPTOR ARCHERY trademark without the consent of Raptor.

23.

2XJ's use in commerce of a reproduction, copy or colorable imitation of the RAPTOR

ARCHERY mark has been in connection with the sale, offering for sale, distribution, or advertising of 2XJ's products and services.

24.

2XJ's use in commerce of the RAPTOR ARCHERY mark is likely to cause confusion of consumers, or to cause mistake, or to deceive consumers desiring to purchase genuine Raptor products regarding the source and quality of the products and services or their association with Raptor.

25.

2XJ's use in commerce of the RAPTOR ARCHERY mark is a violation of 15 U.S.C. § 1114.

26.

2XJ's use in commerce of a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark has caused loss of goodwill and profits to Raptor, has damaged the reputation of the genuine RAPTOR ARCHERY brand and has injured the public by causing confusion, mistake, and deception.

27.

2XJ has used the RAPTOR ARCHERY mark in commerce with the knowledge and intent that such use causes confusion, mistake, and deception to the purchasing public.

28.

Pursuant to 15 U.S.C. § 1116(a), Raptor is entitled to preliminary and permanent injunctive relief to prevent 2XJ's continuing use in commerce of a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark.

29.

Pursuant to 15 U.S.C. § 1117(a), Raptor is entitled to damages for 2XJ's use in commerce of a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark, an accounting of profits made by 2XJ, and recovery of Raptor's costs of this action.

30.

The intentional use of a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark by 2XJ makes this an exceptional case entitling Raptor to an award of three times its actual damages and recovery of its reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

**COUNT TWO: COMMON LAW TRADEMARK INFRINGEMENT**

31.

The foregoing paragraphs are incorporated herein by reference.

32.

2XJ's acts constitute trademark infringement under the common law of the State of Oregon.

33.

2XJ's acts of trademark infringement entitle Raptor to recover its damages and costs of this action, together with an accounting of profits made by 2XJ on sales of its goods and services in connection with which 2XJ uses a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark.

34.

The acts of 2XJ have been malicious and calculated to injure Raptor. The willful, wanton

and malicious nature of 2XJ's conduct entitles Raptor to an award of punitive damages against 2XJ.

35.

2XJ's infringement of the RAPTOR ARCHERY mark is irreparably injuring Raptor's goodwill and, unless enjoined by this Court, will continue to do so.

36.

Further, Raptor may not have an adequate legal remedy in the event money damages cannot properly be calculated.

37.

Under the common law of the State of Oregon, plaintiff is entitled to preliminary and permanent injunctive relief to prevent 2XJ's continuing trademark infringement.

**COUNT THREE: FEDERAL UNFAIR COMPETITION**

38.

The foregoing paragraphs are incorporated herein by reference.

39.

The actions of 2XJ constitute unfair competition with Raptor in violation of 15 U.S.C. § 1125(a).

40.

Pursuant to 15 U.S.C. § 1117(a), Raptor is entitled to damages for 2XJ's unfair competition, an accounting of profits made by Raptor and recovery of Raptor's costs of this action.

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41.

2XJ's unfair competition with Raptor has been willful and wanton for the purpose of deceiving consumers and injuring the goodwill of Raptor.

42.

2XJ's acts of unfair competition make this an exceptional case entitling Raptor to an award of three times its actual damages pursuant to and recovery of its reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

43.

2XJ's acts of unfair competition are irreparably injuring Raptor's goodwill and eroding Raptor's share of the market and, unless enjoined by this Court, will continue to do so.

44.

Pursuant to 15 U.S.C. § 1116(a), Raptor is entitled to preliminary and permanent injunctive relief to prevent 2XJ's continuing acts of unfair competition.

**COUNT FOUR: COMMON LAW UNFAIR COMPETITION**

45.

The foregoing paragraphs are incorporated herein by reference.

46.

2XJ's acts constitute unfair competition under the common law of the State of Oregon.

47.

2XJ's acts of unfair competition entitle Raptor to recover its damages and costs of this action, together with an accounting of profits made by 2XJ.

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48.

2XJ's acts of unfair competition have been malicious and calculated to injury Raptor.

49.

The willful, wanton and malicious nature of 2XJ's conduct entitles Raptor to an award of punitive damages against 2XJ.

50.

2XJ's acts of unfair competition are irreparably injuring Raptor's goodwill and eroding Raptor's share of the market, and unless enjoined by this Court, will continue to do so. Further, Raptor may not have an adequate legal remedy in the event money damages cannot properly be calculated.

51.

Under the common law of the State of Oregon, Raptor is entitled to preliminary and permanent injunctive relief to prevent 2XJ's continuing acts of unfair competition.

**COUNT FIVE: FEDERAL FALSE DESIGNATION OF ORIGIN OR SOURCE**

52.

The foregoing paragraphs are incorporated herein by reference.

53.

The RAPTOR ARCHERY mark is distinctive, and indicate to consumers that products and services bearing such marks originate from a single source.

54.

Raptor's products symbolize substantial goodwill of Raptor resulting in significant sales of its high-quality archery products.

55.

2XJ's use of the RAPTOR ARCHERY mark likely causes confusion, or mistake, or deceives consumers as to the origin or source of 2XJ's products and services.

56.

2XJ's use in commerce of a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark is likely to cause consumers to believe that Raptor's and 2XJ's products and services come from the same origin or source, or that Raptor sponsors or approves the goods of 2XJ, or that Raptor and 2XJ are somehow affiliated, connected or associated with one another when in fact they are not.

57.

2XJ's use in commerce of a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark is injuring the goodwill of Raptor.

58.

The actions of 2XJ constitute a violation of 15 U.S.C. §1125.

59.

Pursuant to 15 U.S.C. § 1117, Raptor is entitled to damages for 2XJ's violations, an accounting of profits made by 2XJ on sales of its goods, and recovery of Raptor's costs of this action.

60.

2XJ has willfully and wantonly infringed the RAPTOR ARCHERY mark, and its actions have been calculated to confuse, mislead or deceive consumers, and to injure the goodwill of Raptor.

61.

The acts of 2XJ make this an exceptional case entitling Raptor to an award of three times its actual damages pursuant to 15 U.S.C. § 1117(a) and (b) and recovery of its reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

62.

2XJ's infringement of the RAPTOR ARCHERY mark is irreparably injuring Raptor's goodwill and eroding Raptor's share of the market, and unless enjoined by this Court, will continue to do so.

63.

Pursuant to 15 U.S.C. § 1116, Raptor is entitled to preliminary and permanent injunctive relief to prevent 2XJ's continuing trademark infringement.

**JURY DEMAND**

64.

Raptor hereby demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that:

1. Pursuant to 15 U.S.C. § 1116 and the common and statutory laws of the State of Oregon, 2XJ, its officers, agents, employees, servants, attorneys, successors, and assigns, and all others in privity or acting in concert or active participation with them, be preliminarily and permanently enjoined from:

a. Directly or indirectly manufacturing, distributing, advertising, marketing or selling 2XJ's products in any fashion which would state, imply or suggest that such products

are Raptor's brand products or are associated with or come from the same source as the Raptor brand;

b. Inducing or enabling others to directly or indirectly manufacture, distribute, advertise, market or sell one or more infringing goods under a reproduction, copy or colorable imitation of the RAPTOR ARCHERY mark;

c. Making or inducing others to make any false, misleading or deceptive statement of act, or representation of fact in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of one or more infringing services or goods in such fashion as to suggest that such infringing services or goods are connected with or associated with or sponsored by Plaintiff.

2. 2XJ be adjudged to have intentionally infringed and copied the RAPTOR ARCHERY mark and to have manufactured, distributed, marketed, advertised and/or sold infringing goods and be required to pay Raptor:

- a. Its actual damages and any profits of 2XJ resulting from said infringement;
- b. Three times the actual damages of Raptor resulting from said infringement;
- c. Its reasonable attorney's fees;
- d. Its costs and expenses; and
- e. Pre-judgment interest;

3. 2XJ be adjudged to have unfairly competed with Raptor and be required to pay Raptor:

- a. Its actual damages and any profits of 2XJ resulting from its acts of unfair

competition;

- b. Its reasonable attorney's fees;
- c. Its costs and expenses; and
- d. Prejudgment interest;

4. Pursuant to 15 U.S.C. § 1116 and the common law of the State of Oregon, 2XJ, its officers, agents, employees, servants, attorneys, successors, and assigns, and all others in privity or acting in concert or active participation with them, be preliminarily and permanently enjoined from:

- a. Directly or indirectly falsely designating the origin of 2XJ's goods;
- b. Inducing others to directly or indirectly falsely designate the origin of 2XJ's goods;
- c. Making or inducing others to make any false, misleading or deceptive statement of fact, or representation of fact in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of 2XJ's goods as to the origin or source of 2XJ's goods so as to cause consumers to believe that Raptor's and 2XJ's goods come from the same origin or source, or that Raptor sponsors or approves 2XJ's goods, or that Raptor and 2XJ are somehow affiliated, connected or associated with one another;

5. 2XJ be adjudged to have falsely designated the origin or, and induced others to have falsely designated the origin of 2XJ's goods and be required to pay Raptor:

- a. Its actual damages and any profits of 2XJ resulting from said false designation of origin, pursuant to 15 U.S.C. § 1117(a) or alternatively, statutory damages in an amount to be determined by this Court;

b. Three times the actual damages of Raptor resulting from said false designation of origin, pursuant to 15 U.S.C. § 1117(a);

c. Its reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a);

d. Its costs and expenses; and

e. Pre-judgment interest;

6. 2XJ be ordered to deliver up for destruction all products, labels, signs, plates, packages, dies, wrappers, receptacles and advertisements in its possession or under its control, bearing any words, terms names, symbols, devices, or any combination thereof, which: simulate, reproduce, counterfeit, copy or colorably imitate the RAPTOR ARCHERY mark in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution or any product in such fashion as to relate or connect, or tend to relate or connect, such service or product in any way to Raptor; or otherwise misrepresent the source or origin of 2XJ's goods; and all plates, molds, matrices and other means of making the same;

7. 2XJ be ordered to take corrective action to correct any erroneous impression the public may have derived concerning the source or origin of 2XJ's goods, including without limitation the placement of corrective advertising;

8. Raptor be granted such other relief as the Court may deem appropriate to correct any erroneous impression the public may have derived concerning the source or origin of 2XJ's goods; and

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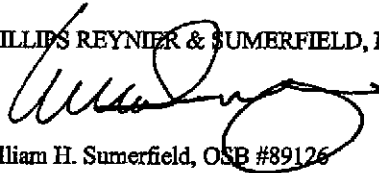
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9. Raptor be awarded such other relief as the Court deems just and equitable.

DATED this 13 day of November, 2008.

PHILLIPS REYNIER & SUMERFIELD, LLP



William H. Sumerfield, OSB #89126

Attorney for Plaintiff

(541) 386-4264

[bill@phillipsreynier.com](mailto:bill@phillipsreynier.com)